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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,702	08/05/2003	Kimberly A. Campana	29939/38771	7556

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MARSHALL, GERSTEIN & BORUN LLP  
6300 SEARS TOWER  
233 S. WACKER DRIVE  
CHICAGO, IL 60606

EXAMINER


GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 11/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/634,702	Applicant(s) CAMPANA, KIMBERLY A. 	
	Examiner Jeffrey L. Gellner	Art Unit 3643	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 September 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 4-43 is/are pending in the application.
- 4a) Of the above claim(s) 10-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9 and 30-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: <u>See Continuation Sheet</u> .                      |

## **DETAILED ACTION**

### ***Claim Objections***

Claims 31 and 38 are objected to because of the following informality:

Claims 31 and 38 appear to be redundant of claims 30 and 37, respectively.

Appropriate correction is required.

### ***Claim Rejections - 35 USC §103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-9, and 37-43 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kono (JP2000-300071) in view of Johnson (US 4,197,684).

As to Claim 1, Kono discloses a lawn edging (Figs. 1-3) comprising a plurality of middle blocks (middle blocks shown in Figs. 1-3) and two end blocks (two blocks on ends shown in Figs. 1-3); each middle block being connected to a middle block and an end block by a living hinge (shown as narrow portions in Figs. 1-3); each middle block and end block including an upper portion (region of block around top of block in Figs. 1-3) and lower tapered portion (region of block around bottom of block in Figs. 1-3) each upper portion including a front face (upper portion shown in Figs. 1-3) comprising a texture (shown in Fig. 3). Not disclosed is the upper portion having a front face that has three-dimensional simulated rock texture and the

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blocks hollow. Johnson, however, discloses an edging having a three-dimensional simulated rock texture (col. 1 lines 43-46; 12, 13, and 14 of Figs. 1-4) and the blocks being hollow (col. 2 lines 35-37). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the edging of Kono by adding the three-dimensional simulated rock texture and hollow blocks as disclosed by Johnson so as to meet consumer demand and tastes and reduce the time and effort needed in maintaining the area (see Johnson at col. 1 lines 43-56).

As to Claim 4, the limitations of Claim 1 are disclosed as described above. Not disclosed is the lawn edging fabricated by a continuous forming process. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging of Kono as modified by Johnson by making with a continuous vacuum forming process as a known method of shaping plastic objects. MPEP 2113 (Product-by-Process Claims) states that “if the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process.” Here, the Applicant’s edging is anticipated by Kono as modified by Johnson. The process by which the edging is made is not patentably distinct.

As to Claim 5, Kono as modified by Johnson further disclose the living hinge permitting two adjacent blocks to be positioned at an angle ranging from about 180° to 90° (Kono at Fig. 3).

As to Claim 6, Kono as modified by Johnson further disclose pressure equalization holes (28, 29, and 30 of Fig. 2 of Johnson).

As to claims 7 and 8, Kono as modified by Johnson further disclose the blocks made of two or more plastic materials (“flexible synthetic resins” of para. 0007 of translation of Kono) with one being polyethylene (para. 0007 of translation of Kono).

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As to Claim 9, Kono as modified by Johnson further disclose the lower portions of each block including two side edges that extend inwardly towards each other as they extend downwardly to form a point (Fig. 1 of Kono), the lower portion further including front and rear faces (top portions in Fig. 1 of Kono), the lower portion tapered (lower portions of Fig. 1 of Kono).

As to Claims 37 and 38, Kono discloses a lawn edging (Figs. 1-3) comprising a plurality of middle blocks (middle blocks shown in Figs. 1-3) and two end blocks (two blocks on ends shown in Figs. 1-3); each middle block being connected to a middle block and a end block by a living hinge (shown as narrow portions in Figs. 1-3); each middle block and end block including an upper portion (region of block around top of block in Figs. 1-3) and lower tapered portion (region of block around top of block in Figs. 1-3) each upper portion including a front face (shown in Figs. 1-3, 7, and 11) comprising a texture (shown in Fig. 3); and, lower portions of each block including two side edges that extend inwardly towards each other as they extend downward from the upper portions (see Fig. 1) and the lower portion having front and rear faces (Fig.1). Not disclosed is the upper portion having a front face that has three-dimensional simulated rock texture and the blocks hollow. Johnson, however, discloses an edging having a three-dimensional simulated rock texture (col. 1 lines 43-46; 12, 13, and 14 of Figs. 1-4) and the blocks being hollow (col. 2 lines 35-37). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the edging of Kono by adding the three-dimensional simulated rock texture and hollow blocks as disclosed by Johnson so as to meet consumer

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demand and tastes and reduce the time and effort needed in maintaining the area (see Johnson at col. 1 lines 43-56).

As to Claim 39, the limitations of Claim 38 are disclosed as described above. Not disclosed is the lawn edging fabricated by a continuous forming process. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging of Kono as modified by Johnson by making with a continuous vacuum forming process as a known method of shaping plastic objects. MPEP 2113 (Product-by-Process Claims) states that "if the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process." Here, the Applicant's edging is anticipated by Kono as modified by Johnson. The process by which the edging is made is not patentably distinct.

As to Claim 40, Kono as modified by Johnson further disclose the living hinge permitting two adjacent blocks to be positioned at an angle ranging from about 180° to 90° (Kono at Fig. 3).

As to Claim 41, Kono as modified by Johnson further disclose pressure equalization holes (28, 29, and 30 of Fig. 2 of Johnson).

As to claims 42 and 43, Kono as modified by Johnson further disclose the blocks made of two or more plastic materials ("flexible synthetic resins" of para. 0007 of translation of Kono) with one being polyethylene (para. 0007 of translation of Kono).

Claims 2 and 30-36 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kono (JP2000-300071) in view of Johnson (US 4,197,684) in further view of Kownacki et al. (US 5,956,892).

As to Claim 2, the limitations of Claim 1 are disclosed as described above. Kono further discloses lower portions of each block including two side edges that extend inwardly towards each other as they extend downward from the upper portions (see Fig. 1) and the lower portion having front and rear faces (Fig.1). Not disclosed is the lower portion having a barbed rib. Kownacki et al., however, discloses a lawn edging with a barbed rib (26 and 34 of Fig. 2) in the lower portion (24 of Fig. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging of Kono as modified by Johnson by adding barbs as disclosed by Kownacki et al. so as to inhibit undesired removal of the edging (Kownacki et al. at col. 3 lines 13-15).

As to Claims 30 and 31, Kono discloses a lawn edging (Figs. 1-3) comprising a plurality of middle blocks (middle blocks shown in Figs. 1-3) and two end blocks (two blocks on ends shown in Figs. 1-3); each middle block being connected to a middle block and a end block by a living hinge (shown as narrow portions in Figs. 1-3); each middle block and end block including an upper portion (region of block around top of block in Figs. 1-3) and lower tapered portion (region of block around top of block in Figs. 1-3) each upper portion including a front face (shown in Figs. 1-3, 7, and 11) comprising a texture (shown in Fig. 3); and, lower portions of each block including two side edges that extend inwardly towards each other as they extend downward from the upper portions (see Fig. 1) and the lower portion having front and rear faces (Fig.1). Not disclosed is the upper portion having a front face that has three-dimensional simulated rock texture; the blocks hollow; and, the lower portion having a barbed rib. Johnson, however, discloses an edging having a three-dimensional simulated rock texture (col. 1 lines 43-

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46; 12, 13, and 14 of Figs. 1-4) and the blocks being hollow (col. 2 lines 35-37); Kownacki et al. discloses a lawn edging with a barbed rib (26 and 34 of Fig. 2) in the lower portion (24 of Fig. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the edging of Kono by adding the three-dimensional simulated rock texture and hollow blocks as disclosed by Johnson so as to meet consumer demand and tastes and reduce the time and effort needed in maintaining the area (see Johnson at col. 1 lines 43-56) and to further modify the edging by adding barbs as disclosed by Kownacki et al. so as to inhibit undesired removal of the edging (Kownacki et al. at col. 3 lines 13-15).

As to Claim 32, the limitations of Claim 31 are disclosed as described above. Not disclosed is the lawn edging fabricated by a continuous forming process. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging of Kono as modified by Johnson and Kownacki et al. by making with a continuous vacuum forming process as a known method of shaping plastic objects. MPEP 2113 (Product-by-Process Claims) states that "if the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process." Here, the Applicant's edging is anticipated by Kono as modified by Johnson and Kownacki et al. The process by which the edging is made is not patentably distinct.

As to Claim 33, Kono as modified by Johnson and Kownacki et al. further disclose the living hinge permitting two adjacent blocks to be positioned at an angle ranging from about 180° to 90° (Kono at Fig. 3).

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As to Claim 34, Kono as modified by Johnson and Kownacki et al. further disclose pressure equalization holes (28, 29, and 30 of Fig. 2 of Johnson).

As to claims 35 and 36, Kono as modified by Johnson and Kownacki et al. further disclose the blocks made of two or more plastic materials ("flexible synthetic resins" of para. 0007 of translation of Kono) with one being polyethylene (para. 0007 of translation of Kono).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1,2, 4-9, and 30-43 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The translation in English of JP2000-300071 A is included with this office action.

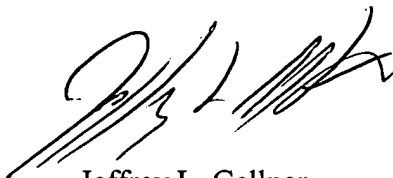
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

A handwritten signature in black ink, appearing to read 'J. L. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner  
Primary Examiner

Continuation of Attachment(s) 6). Other: translation in English of JP2000-300071 A.